

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 09, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

IN THE MATTER OF THE
EXTRADITION OF JASON
EDWARD CAPPS¹

No. 2:22-MJ-0193-JAG

CERTIFICATION OF
EXTRADITABILITY
AND ORDER

On November 2, 2022, the Court held a hearing to determine whether sufficient evidence exists to sustain the charge under the proper treaty to certify to the Secretary of State that a warrant may issue for the surrender of JASON EDWARD CAPPS (“Mr. Capps”). Mr. Capps appeared represented by Attorney Bevan Maxey. Assistant U.S. Attorney Timothy Ohms represented the United States. The Court admitted the Government’s Exhibits 1, 2, 3 and 3A and heard argument from the parties.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court makes the following findings of fact and conclusions of law:

1. The Court’s Ability to Conduct Extradition Proceedings:

This Court is authorized to conduct extradition proceedings. 18 U.S.C. § 3184, *see also* LMJR 2(a)(2).

¹ Mr. Capps legally changed his name to Jason Edward Schnatterle. The Court refers to him by the name listed in the arrest warrant and extradition materials.

1 2. The Court's Jurisdiction Over Mr. Capps:

2 This Court has jurisdiction over Mr. Capps. The United States Marshal
3 Service arrested Mr. Capps in Clarkston, Washington. ECF No. 19. is within the
4 Eastern District of Washington. Since Mr. Capps was found within this
5 jurisdiction, the personal jurisdictional requirement of 18 U.S.C. § 3184 is met.

6 3. The Force and Effect of the Extradition Treaty:

7 The applicable treaty, the Extradition Treaty Between the Government of the
8 United States of America and the Government of the Republic of Korea
9 ["Extradition Treaty"], is in full force and effect. "The Treaty shall enter into force
10 upon the exchange of the instruments of ratification." Article 21, ECF No. 32-1,
11 Bates 26. The parties exchanged ratifications at Seoul, South Korea, on December
12 20, 1999. [https://www.state.gov/wp-content/uploads/2019/02/12962-South-Korea-](https://www.state.gov/wp-content/uploads/2019/02/12962-South-Korea-Law-Enforcement-Extradition-6.9.1998.pdf)
13 [Law-Enforcement-Extradition-6.9.1998.pdf](https://www.state.gov/wp-content/uploads/2019/02/12962-South-Korea-Law-Enforcement-Extradition-6.9.1998.pdf).

14 4. The Alleged Crime and the Extradition Treaty:

15 The crime of Causing Another's Bodily Injury by Rape qualifies as an
16 extraditable offence pursuant to Article 2 of the Extradition Treaty:

17 (1) An offense shall be an extraditable offense if, at the time of
18 the request, it is punishable under the laws in both Contracting
19 States by deprivation of liberty for a period of more than one
20 year, or by a more severe penalty.

21 (2) An offense shall also be an extraditable offense if it consists
22 of an attempt . . . of an offense described in paragraph 1,
provided that the requirements of paragraph 1 are met.

23 Extradition Treaty, Article 2, ECF No. 32-1.

24 Causing Another's Bodily Injury by Rape is analogous to the Federal crime
25 of Attempted Aggravated Sexual Abuse, 18 U.S.C. § 2241(a)(1), and Washington
26 States' crime of Criminal Attempt/Second-Degree Rape, Wash Rev. Code Ann.
27 § 9A.28.020 and § 9A.44.050. Korean law defines Causing Another's Bodily
28 Injury by Rape as follows: "A person who commits any of the crimes of Articles

1 297 (Rape), 297-2, and 298 through 300 (Attempts), thereby inflicting or causing
2 the injury of a victim of such crime, shall be punished by imprisonment for life or
3 for at least five years.” ECF No. 32-1, Bates 139. Similarly, the United States
4 Code defines Aggravated Sexual Abuse as follows: “Whoever, [in a Federal
5 jurisdiction] knowingly causes another person to engage in a sexual act— (1) by
6 use of force against that person . . . or attempts to do so, shall be fined under this
7 title, imprisoned for any term of years or life, or both.” 18 U.S.C. § 2241(a)(1).
8 Washington law also recognizes forcible rape as an offense: “A person is guilty of
9 rape in the second degree when, under circumstances not constituting rape in the
10 first degree, the person engages in sexual intercourse with another person: (a) By
11 forcible compulsion . . . Rape in the second degree is a class A felony.” RCW
12 9A.44.050. Additionally, RCW 9A.28.020 criminalizes an attempt.

13 Though the Korean law specifically criminalizes ‘causing injury’ during an
14 attempted rape and the American laws lack that specificity, each statute aims to
15 combat a similar evil.

16 The primary focus of dual criminality has always been on the
17 conduct charged; the elements of the analogous offenses need not
18 be identical. When the laws of both the requesting and the
19 requested party appear to be directed to the same basic evil, the
20 statutes are substantially analogous, and can form the basis of
dual criminality.

21 *Clarey v. Gregg*, 138 F.3d 764, 766 (9th Cir. 1998) (internal citation omitted).

22 Injury caused by forcible attempted rape is analogous to forcible attempted
23 commission of a sexual act and forceable rape because each statute aims to prevent
24 forcible sexual contact.

25 As quoted above, each of the statutes are punishable by a deprivation of
26 liberty in excess of one year, thus satisfying the treaty requirement that a crime
27 must be punishable by deprivation of liberty in excess of one year.
28

1 5. Probable Cause:

2 Sufficient evidence supports probable cause. According to the Ninth
3 Circuit, in the extradition context, probable causes exists where there is any
4 evidence warranting the finding that there is a reasonable ground to believe that the
5 accused is guilty. *Mirchandani v. United States*, 836 F.2d 1223, 1226 (9th Cir.
6 1988). “For the purposes of extradition proceedings, the extradition magistrate
7 properly accepts as true the offers of proof from the demanding state.” *In re the*
8 *Extradition of Kyung Joon Kim*, 2005 WL 6399831, at 11 (C.D. Cal. October 5,
9 2005).

10 Korea submitted the victim’s statement, medical certification, and photos of
11 texts in support of the charge of violation of Article 301 of the Korean Criminal
12 Act. Prosecutors must prove that defendant injured the victim during an obstructed
13 attempt to rape her. See Article 297, 300, and 301 of the Korean Criminal Act,
14 discussed in ECF No. 32-1. In her statement at ECF No. 32-1, Bates 34-38, the
15 alleged victim stated the following: The victim describes Mr. Capps planning to
16 meet with her to discuss employment with her school. He managed to convince
17 her to stop by his home prior to their meeting where she entered because he told
18 her that he had something to show her. She ended up in his bedroom. She
19 described Mr. Capps holding her down on his bed while she struggled to escape.
20 She indicated that he kissed and fondled her while he had her pinned, and he
21 attempted to remove her pants. The victim reported to law enforcement that Mr.
22 Capps told her he intended to have sex with her during the struggle. She escaped
23 to the bathroom, but was unable to get out of the house. She described wedging
24 herself in the door frame to avoid being overpowered again. According to the
25 victim, Mr. Capps eventually gave up, and agreed to drive her home. The victim
26 reported the crime first to friends, then to law enforcement. She visited the
27 hospital where they documented injuries consistent with her account of events.
28

1 She allowed law enforcement to photograph text messages she indicated were from
2 Mr. Capps that corroborated her statement.

3 The alleged victim's account, plus corroborating evidence, provides ample
4 evidence of probable cause in this case. The alleged victim suffered injuries
5 during a struggle wherein Mr. Capps made forcible sexual advances that the victim
6 fended off. Accordingly, on the record before the Court, there is probable cause to
7 support the extradition request.

8 II. CERTIFICATION OF EXTRADITABILITY AND ORDER

9 Based on these findings the Court **CERTIFIES** to the Secretary of State that
10 the Government's evidence is "sufficient to sustain the charge under the proper
11 treaty..." 18 U.S.C. § 3184. Having so found, this Court must issue a "warrant for
12 the commitment of the [Mr. Capps] to the proper jail, there to remain until such
13 surrender shall be made." Accordingly, Mr. Capps is **REMANDED** to the custody
14 of the United States Marshal Service to be surrendered as directed by the Secretary
15 of State. **IT IS SO ORDERED.** The District Court Executive is directed to file
16 this Order, provide copies to counsel, send by way of certified mail the following
17 documents to:

18 U.S. Department of State Office of the Legal Adviser/LEI, Room 4331
19 ATTN: Amy Stoller
20 2201 C Street, NW
21 Washington, D.C. 20520

22 (1) certified copies of this Certification of Extraditability and Order, (2) a certified
23 transcript of the extradition hearing, and (3) the original exhibits filed with the
24 Court, and **CLOSE** this file.

25 DATED November 9, 2022.




JAMES A. GOEKE
UNITED STATES MAGISTRATE JUDGE